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THE "DUBIOUS" CASES OF THE RATIO DECIDENDI IN THE COURT OF JUSTICE OF THE EUROPEAN UNION IN THE SECTOR OF THE CFSP

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Abstract: The present work has attempted to delimit the jurisdiction through the jurisprudence of the Court of Justice of the European Union, i.e. to give a deep connection and approach to the politics of the CFSP, through sentences from the past and those that are not yet decided within the European Union framework. Such as the role of national courts in a preliminary ruling, the role of the judge of the Luxembourg in the field of preliminary ruling in foreign policy matters, the extensive and/or restrictive interpretation via the Treaty of Lisbon or acts of the European Union. These are some of the points of

investigation and thoughts that are considered in this investigation.

Keywords: European Union law; CJEU; ratio decidendi; jurisdiction of the CJEU; jurisprudence of the CJEU; restrictive interpretation; Common Foreign and Security Policy (CFSP).

INTRODUCTION

The judges of the Court of Justice of the European Union (CJEU) in the field of security and defense policy, in recent years, have followed some different and more systematic paths from the past, based above all on the delimitation of the relevant power which dates back to Article 25, par. 1, letter. b) TEU and Art. 275, par. 1 TFEU (Blanke, Mangiamelli, 2021), as derogations of a general nature which ensure that judges respect the law derived from an interpretation and application of the treaties pursuant to Art. 19 TEU.

The techniques of derogations as exceptions are subject to restrictive interpretation according to the Mauritius case:

> "(...) it can only be considered that the scope of limitation of a derogatory nature of the jurisdiction of the Court, provided for by Article 24, paragraph 1, second subparagraph, last sentence, TEU and Article 275 TFEU extends to the point of excluding (...) being competent to interpret and apply the provisions of the Financial Regulation relating to the award of public contracts (...)[1].

In the Elitaliana case, the CJEU stated that:

> "(...) Articles 24, paragraph 1, second subparagraph, last sentence, and 275, first sub-paragraph, introduce a derogation from the rule of general jurisdiction that Article 19 TEU confers (...) for ensure respect for the law in the interpretation and application of treaties, and must therefore be interpreted restrictively (...)"[2].

In the H v. Council case, the same ratio of decision was

[1]CJEU, C-658/11, Parliament v. Council of 24 June 2014, ECLI:EU:C:2014:41, published in the electronic Reports of the cases, par. 49.

[2]CJEU, C-439/13 P, Elitaliana v. Eulex Kosovo of 12 November 2015, ECLI:EU:C:2015:753, published in the electronic Reports of the cases, par. 42.

noted[3]. The argument was based on the jurisprudence necessary to present an appeal given that the ratione materiae of the judgments could not be traced back to rules that were already written[4]. This was an interpretative logic of continuity that followed the CJEU, as a ratio decidendi, as it also noted in the Neves 77[5] preliminary ruling case which had as its basis the Romanian implementation measures for sanctions that are adopted against Russia as well as the

[3]CJJEU, C-455/14 P, H. v. Council od 19 July 2016, ECLI:EU:C:2016:212, published in the electronic Reports of the cases, par. 40. C-14/19 P, CSUE v. KF of 25 June 2020; ECLI:EU:C.2020:492, not yet published, par. 66.

[4]CJEU, C-134/19 P, Bank Refah Kargaran of October 2020; ECLI:EU:C:2020:793, not yet published, par. 32 is affirmed that: "(...) the ratio decidendi in question. In reality, as will be seen below, the Court, at first instance, and the Court, on appeal, are competent to rule on an appeal for damages to the extent that it is aimed at obtaining compensation for the economic damage allegedly suffered due to restrictive measures adopted against natural or legal persons and provided for by CFSP decisions: in fact, said appeal is an integral part of the jurisdictional protection, necessarily complete also in terms of compensation, which the treaties entrust ratione materiae to the Union judges pursuant to art. 275 TFEU (...)".

[5]CJEU, C-351/22, Neves 77, not yet decided.

appeal of the KS and KD case[6] related to the subjective responsibility of the Union with regard to the relative inertia that was shown during the European UNMIK mission in Kosovo and the corresponding investigations for those responsible during the conflict, that we have experienced in the past[7]. In this case, the Advocate General Çapeta has given his lights to follow this type of systematic and different argumentation from the past[8].

THE FORMATION OF THE RATIO DECIDENDI

The general rules which have exceptions, such as those concerning the ratione materiae of the judges of the Union, and extensive interpretation are not sufficient to have an interpretative connection with the judicial system of the EU.

The treaties as primary law of the Union up to now elaborate and lay the basis of autonomy and specificity for

[6]CJEU, C-29/22 P and C-44/22 P, KS and KD v. Council not yet decided.

[7]See also the conclusions of the Advocate General Çapeta in case C-29/22 P and C-44/22 P of 23 November 2023.

[8]CJEU, C-351/22, Neves 77, op. cit., par. 50.

the Common Foreign and Security Policy (CFSP) which is part of development cooperation as well as the general sector of external relations of the Union.

At the European Parliament, the European Commission and the CJEU are the main bodies that the treaties have introduced into their powers a certain confidentiality[9]

[9]The lack of a regime that is connected with the title V TEU as well as with specific protection of interferences related to the actions of the Union showed that the flexibility clause according to Art. 452, par. 4 TFEU provided a legal basis for the protection of personal data in the field of CFSP. Obviously, legislative acts that have to do with the decision-making process which is part of the unanimity of the European Council and the Council are excluded, thus also reserving a more priority and decision-making role. In such a way, the European parliament has carried out a task which indirectly affects the financing sector according to Art. 41 TEU and the overall amount of the related CFSP actions that have to do with operational expenditure in the defense and security sector according to the budget of the Union. The CFSP plays a role through its own acts which do not have a legislative nature but constitutes in a general way the decisions that define the actions that are positive for the conditions that are applied to the relevant policies of the Union, strengthening the systematic cooperation between the Member States where the decisions and policies of the Union have little legal significance and CFSP decisions are also part of other decisions of the Union. The CFSP also gives the Union the relevant competence through Art. 37 TEU to stipulate their

within the maintenance of intergovernmental cooperation thus governments play the main role and the reforms identified are numerous for the characterization of the CFSP. According to primary law the jurisdiction under CFSP was based on Art. 24, par. 1, letter. 2 TEU, as a point of observation of the distribution between the competences of the Union and the competences of the CFSP. The control of decisions also takes into consideration restrictive measures for natural and legal persons according to Art. 275 TFEU (Van Elsuwege, 2021; Blanke, Mangiamelli, 2021).

Within this context, the power of jurisdicion belongs to the judges of the Union with a restrictive way. The ratio iuris for the treaties are reconcilable with the relevant argumentative structure that we have seen in the cases of the CJEU in the sector of foreign policy. When there are uncertainties in the borders of foreign and defense policy, the sectors of external competence of the Union ensure that the institutions act within the spirit of the CFSP as a competence that dates back to Art. 40 TEU. They also using the CFSP legal basis which carries out the tasks that are important for the external relations of the Union.

international agreements in a particular and transparent way.

Moreover, if we take into account the interpretation of the reference via Art. 275, letter 2 TFEU the acts that are part of restrictive measures against natural and legal persons, within the CFSP, have taken into consideration the interpretation that defines the relationship of a limited centralization of jurisdiction within the CFSP and the CJEU framework. Such a provision has systemic nature and is of a general nature according to Art. 19 TEU allowing various tasks of jurisdiction to the judges of the CJEU according to those described in Art. 19, par. 3TEU. This is how the principle of attribution and the rules of the judicial institution function according to the limits conferred on them by the relevant treaties where the judge of the Union decides pursuant to what the treaties themselves pre-establish.

The jurisdiction of the CJEU also includes the rules that are part of the Generel Court, i.e. the rules applicable within the CFSP, as a total of prescriptions that formally and structurally put the logic of derogation that respects the regimes and follows a systemic path. The regimes followed are part of the scope of the CFSP. The limitation rule is part of the role of the common judge within the scope of CFSP

where through Art. 19 TEU does not proceed to the derogation but to the preferable system of an institutional nature of the Union, to a logical-legal interpretation of an overall nature without deficiencies also which are part of the accession of the European Court of Human Rights (ECtHR), as another super judge partes as we have seen in practice through the order of 2/13 of a paradigmatic nature which declared the will of the Member States that are party to the treaties and where the CJEU itself stated that:

> "(...) in the current state of the law of the Union, certain acts adopted within the framework of the CFSP escape the judicial review of the Court (...) whether as a result of accession in the terms contemplated by the envisaged agreement, the ECtHR would be entitled to rule on the conformity with the ECHR of certain acts, actions or omissions implemented in the context of the CFSP and, in particular, those for which the Court does not have jurisdiction to verify their legitimacy in relation to fundamental rights (...) jurisdictional generalized to the Court of Justice (...)" (Jan Kuijper, Wouters, Hoffmeister, 2018; Darlèn, Lindolm, 2018)[10].

[10]CJEU, Order 2/13. Opinion pursuant to Article 218(11) TFEU. Opinion pursuant to Article 218(11) TFEU-Draft international agreement-Accession of the European Union to the European Convention for the Protection of

The judges of the CJEU have a rather restrictive role in the policy of the CFSP where the autonomous character for cooperation in the integration process after the reform of the Lisbon (Barbato, 2013) has the character of an exception, reducible, applicable to a unitary and homogeneous principle. The Union does not have the character of a homogeneous, unitary order given that the distrust of some European countries has remained low not only in terms of power but also in terms of the risks of uniformity of law within the European context and above all of the relative autonomy in the power of the CFSP, as we have seen with specific way to the treaties.

Establishing politics is one of the commitments that needs jurisdictional guarantees. The complementary role that has integrated the system of national judges puts the competences attributed to the judges of the Union within the immunity of jurisdiction as not inconceivable with the rule of law where the CFSP acts are part of the competence and which operate at the integration function of the

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Human Rights and Fundamental Freedoms-Compatibility of the draft agreement with the EU and FEU Treaties of 18 December 2014, ECLI:EU:C:2014:2454, published in electronic Reports of cases, parr. 52-54.

national judges according to the principle of completeness of the judicial control of the judicial system of the Union.
They remain stable according to Art. 274 TFEU the circumstances which have to do with the Union and which are removed from the competence of the relevant national jurisdictions, such as a general deficiency of the jurisdictional power of the CJEU, which has integrated the national functions of the Member States of the Union. The CJEU, within the ratio decidendi, has produced a paradox which extends to the ius dicere of the CJEU and which reduces the area of intervention of the national judges where it has deprived according to Art. 274 TFEU (Blanke, Mangiamelli, 2021) the useful effect (Liakopoulos, 2020) in the CFSP context as we have seen in the KS and KD case. Consequently, the CJEU is an interpretative body of the Union but with treaty-limiting powers[11].

[11]CJEU, C-263/02 P, Commission v. Jégo-Quéré of 1st April 2004, ECLI:EU:C:2004:210, I-93425, par. 36. C-565/19, Carvalho of 25 March 2021, ECLI:EU:C:2021:252, not yet published, par. 69.

THE WORK OF NATIONAL COURTS TO GIVE EFFECTIVE JURISDICTION TO THE CFSP POLICY

As regards domestic judges, there is a broad spirit of jurisdictional competences in the CFSP where their work is not very effective for judging in this sector (Eckes, 2016; Poli, 2022)[12]. National judges protect the jurisdiction of rights as it is evident in order 1/09[13]. The relative function was based on the treaties through the preliminary ruling of Art. 267 TFEU, without leaving the secondary right of contribution to the policy concerned[14]. Thus, national judges are consistent with the uniform spirit of common law even before the way for a preliminary ruling was opened[15]. The relationship through CJEU and national judges is found in the specific context of complementarity,

[12]See the conclusions of the Advocate General Çapeta in case: KS and KD, op. cit., parr. 77, 100-103. C-872/19, Venezuela v. Council (Affectation d'un État tiers) of 22 June 2021, ECLI:EU:C:2021:507, not yet published, par. 50.

[13]CJEU, C-1/09, CELF II of 11 March 2010, ECLI:EU:C:2010:136, I-02099, parr. 68-70.

[14]Art. 15, par. 3, lett.1 of the Regulation n. 1/2003.

[15]CJEU, C-429/07, X BV of 11 June 2009, ECLI:EU:C:2009:359, I-04833, parr. 19 ss.

of cooperation in a logical scheme of judicial subsidiarity, where the acquis was observed within the territories of the EU Member States. The jurisdiction in the CFSP context belonged in a way supplementary to national judges.

A broad interpretation of the CJEU controls and evaluates the organization of internal judicial systems according to the system of the Union and above all that of the rule of law. The jurisdictional guarantees that states exercise, within their respective powers of a ius dicere, ensure the subjective legal positions that individuals hold according to the law of the Union. In the Wilson case, was given to individuals the right to an internal market, in a well-defined manner, according to the character of a judicial body, which legitimized the judge of the Union through the preliminary ruling. In this way. the CJEU did not limit itself to accepting the domestic order of a judge a quo but laid the foundations according to the characteristics it had in its hands of a permanent character which obliged its jurisdiction, where the legal norms apply independently[16].

[16]C-54/96, Dorsch Consult Ingenieurgeselleschaft mbH v. Bundersbaugesellschaft Berlin mbh of 17 September 1997, ECLI:EU:C:1997:413, I-04961. C-61/65, Vaassen-Goebbels v. Beamtenfonds

In the L.G case, through a preliminary reference, the judging panel which was not independent, has declared as inadmissible the preliminary reference which was promoted by the same panel[17]. The CJEU stated the:

"(...) independence of state judges, supporting that the

voor het Mijnbedrijf of 30 June 1966, ECLI:EU:C:1966:39, I-00377. C-14/86, Pretore di Salò/X of 11 June 1987, ECLI:EU:C:1987:275, I-02545, par. 7. C-109/88, Handels-og Kontorfumktionærernes Forbund i Danmark v. Dansk Arbeijdsgiverforening, agente per Danfoss of 17 October 1989, ECLI:EU:C:1989:383, I-03199, parr. 7, 8. C-393/92, Gemeente Almelo and others v. Energiebedrijf Ijsselmji of 27 April 1994, ECLI:EU:C:1994:171, I-01477. C-111/94, Job Centre of 19 October 1995, ECLI:EU:C:1995:340, I-03361, par. 9.

[17]CJEU, C-718/21 Krajowa Rada Sądownictwa (Maintien en fonctions d'un juge) of 21 December 2023, ECLI:EU:C:2023:1015, not yet published, which is affirmed that: "(...) the referring judge possessed the quality of an independent, impartial and legally established judge, pursuant to Art. 19, par. 1, second sub-paragraph, TEU, considered in light of Art. 47, second paragraph, of the Charter, and, consequently, that this body did not satisfy the requirements to be classified as a "jurisdiction" pursuant to Art. 267 TFEU (which includes the legal origin of the body in question, its permanent nature, the obligatory nature of its jurisdiction, the fact that its proceedings take place in cross-examination, the application of the legal rules by that body, as well as its independence (...)". C-132/20, Getin Noble Bank of 29 March 2022, ECLI:EU:C:2022:366, not yet published, par. 66. See

> good functioning of the preliminary ruling mechanism necessarily requires that Member States preserve both the external dimension of independence (absence of subordination and hierarchical ties between judges and other authorities; irremovability of the judge until retirement or expiry of mandate), and the internal one (impartiality, equidistance with respect to the parties) (...)".

This is an orientation that we also encountered in the Banco de Santander case where it defined the external and internal independence of the national judge with various components (Bogdanowicz, Taborowski, 2023)[18].

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also the conclusions of the Advocate General A. Rantos presented in case: C- 718/21,Krajowa Rada Sądownictwa (Maintien en fonctions d'un juge) of 2 March 2023, ECLI:EU:C:2023:150, not yet published.

[18]CJEU, C-274/14, Banco de Santander of 21 January 2020, ECLI:EU:C:2020:17, published in the electronic Reports of the cases, parr. 57-63, which is affirmed that: "(...) principle of irremovability, the capital importance of which must be underlined, requires, in particular, that judges be able to continue to exercise their functions until they have reached the compulsory age for retirement or until the expiry of their their mandate, if the latter has a specific duration (...) this principle can be subject to exceptions only on condition that this is justified by legitimate and imperative reasons, in compliance with the principle of proportionality. In concrete terms, it is commonly accepted that judges

Additionally, there were other national judges who followed the same path[19] remaining faithful to the Repubblika case, i.e. another preliminary ruling that was proposed after the reform that was made in the judicial system of Malta without, however, giving rising to jurisprudential developments[20]. In other words, domestic

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can be removed where they are unfit to continue to exercise their functions due to incapacity or a serious violation, respecting appropriate procedures for this purpose (...) the statement must be framed, not devoid of assertiveness, according to which (...) guarantees of independence and impartiality imply the existence of provisions, in particular relating to the composition of the body, the appointment, the duration of the functions, as well as the causes of abstention, recusal and removal of its members, which allow the administration to dispel any legitimate doubt regarding the impenetrability of said body to external elements and its neutrality with respect to conflicting interests (...)".

[19]CJEU, C-658/18, Status of Italian Magistrates of 16 July 2020, ECLI:EU:C:2020:572, not yet published, parr. 45-51.

[20]CJEU, C-896/19, Repubblika of 29 April 2021, ECLI:EU:C:2021:311, not yet published. C-204/21, Commission v. Republic of Poland of 5 June 2023, not yet decided where it refers to a case relating to the system of reforms of a Polish judicial system which is incompatible with what has been established by Art. 19, par. 1, letter. b) TEU, Art. 47 CFREU and Art. 267 TFEU as the principle of the primacy of the EU. C-791/19, Commission v. Poland (Régime disciplinaire des juges) of 15 July 2021, ECLI:EU:C:2021:596,

judges have left the jurisdiction outside of their national power remaining thus faithful to the treaties as an integral part of a judicial system that has effectively guaranteed jurisdictional remedies. This was a completed choice of the forms of jurisdiction in the field of CFSP, since the time of the Treaty of Lisbon reform, including also various final considerations.

IS THERE A MIXED JURISDICTION IN THE CFSP SECTOR?

While we talk about jurisdiction, in the sector of the CFSP, we also refer to the function of a complementary nature that it carries out through the path taken by the preliminary ruling. The jurisdiction does not have to deal with acts of a purely political nature but those which are likely to produce effects to individuals. There are many acts of a legislative nature in the general orientations and decisions, actions, positions that are applied to the establishment of lines of political conduct which

not yet published, parr. 56, 60-62 and 95. C-430/21, RS (Effet des arrêts d'une cour constitutionnelle) of 22 February 2022, ECLI:EU:C:2022:99, not yet published, par. 38.

concretizing the sector of cooperation of the Member States according to what Art. 25 TEU establishes.

Immunity from jurisdiction produces from domestic systems the act of state doctrine where an extended profile of executive decisions is thus provided. It is noted, in the CFSP sector, the relative referral in the Neves 77 case, where political decisions produce various consequences for decisions that send a third state that is a victim of military aggression to arms and to a judicial control that absolutely arrives at a decision in the foreign policy sector, also interfering with the separation of powers and the rule of law (Lonardo, 2017)[21].

The ratio decidendi as an object is quite superfluous given that the actio finium regundorum attributes the relative competence to the CJEU, which reconstructs the relative potestas iudicandi of a general nature. The interpretative arguments make use of CFSP tools with a supranational nature.

The CJEU has rejected the position of governments and to the Council for the reason that the judges of the Union are

[21]CJEU, C-72/15, Rosneft of 28 March 2017, ECLI:EU:C:2017:236, published in the electronic Reports of the cases, par. 52.

not competent for decisions concerning the legitimacy of acts in the CFSP sector. Thus, the CJEU controls, evaluates and supervises in the CFSP according to the external attributions that are given to it by the treaty of Lisbon.
In the Ecowas case the CJEU stated that:

> "(...) to be able to define the sphere of its jurisdiction (kompetenz-kompetenz) and control the exercise of the powers of the Council"[22]

annulled a CFSP act (on the subject to combat the spread of small arms) which pursued objectives of both foreign policy and development cooperation (which is a specific external action of the Union) without one of them, in that case, being accessory to the other. Art. 40 TEU prevents the Union from adopting an act in the CFSP context if the measure should instead have also been approved on the basis of the TFEU although less realistic, considering the attitude of the governments.
The CJEU based on the natural judge, the treaties and Art. 40 TEU violated the appeal for inviolability pursuant to ex

[22]CJEU, C-91/05, Commission v. Council of 20 May 2008, ECLI:EU:C:2008:288, I-03651, par. 33.

Art. 263 TFEU. In the Mauritius case,[23] it justified, from an interpretative point of view, the correct exercise, that has to do with the CFSP and, which respected the area of freedom, security and justice, within a development cooperation, and the conclusion of an international agreement where the delivery of people, who suspect that they have created acts of piracy in the European context, provides the Council with a legitimate way to reject the challenge from the European Parliament, thus, enhancing the use of the CFSP legislation as a substantial basis and to the effective extent that leads back to the CFSP and the Council to conclude the relevant agreement.

On this, the CJEU stated that:

> "(...) the use of a type of procedure (provided for by Article 218, par. 6, second paragraph, initial sentence, TFEU) which does not provide for the involvement of the European Parliament (...) with regard to the second ground of appeal proposed by Parliament in the Mauritius case, the Council had objected to its incompetence (...) to verify compliance with the procedure for concluding the underlying international agreement (...) the dispute concerned CFSP acts. The Council's argument is

[23]CJEU, C-658/11, Parliament v. Council of 24 June 2014, op. cit., par. 43.

> unconvincing in the face of the Court's jurisdiction pursuant to Art. 40 TEU (...)"[24].

The powers of the judges have various aspects and are related to the acts that concern Art. 29 TEU. Such a conduct, in the sector of CFSP, puts individual rights to arrive at restrictive measures against natural and legal persons adopted by the same Council. Thus, judicial protection is based on the ratione materiae of the judges of the Union where the sanctions for individuals are emblematic of the extent of the practice and the remedies that demonstrate it.

In the Rosneft case the CJEU stated that:

> "(...) the legitimacy of the individual restrictive measures (adopted against Russia for the situation in Ukraine) in the context of a preliminary ruling (...)[25] respected pursuant to Art. 40 TEU, a question of legitimacy of the restrictive measures decided against individuals (...) the reference for a preliminary ruling to establish validity constituted, like the action for annulment, an instrument of checking the legitimacy of the acts of the Union (...) according to the consolidated jurisprudence, the Court

[24]CJEU, C-658/11, Parliament v. Council of 24 June 2014, op. cit., parr. 58-59.

[25]CJEU, C-72/15, Rosneft of 28 March 2017, op. cit., par. 62.

> was able to point out that the jurisdictional system extends the control of the legitimacy of decisions which provide for the adoption of restrictive measures against natural or legal persons within the scope of the CFSP (...)
>
> the question of validity of the CFSP restrictive measure arises when challenging the corresponding national implementing act and that same measure pursuant to Art. 277 TFEU, has access to the preliminary ruling (...) on the invalidity of the CFSP measure appears indispensable in order to ensure the effective judicial protection of individual rights (...) the national judge, seised to challenge any executive measures of the CFSP act, must therefore raise doubts of validity of the sanctioning act as a preliminary ruling (...) it is up to qualify the act itself and rule on its interpretation and validity (...)" (Meletidis, 2023)[26].

[26]CJEU, C-72/15, Rosneft of 28 March 2017, op. cit., parr. 62, 63, 65, 69. C-355/04 P, Segi and others v. Council of 27 February 2007, ECLI:EU:C:2007:116, I-01657, which is affirmed that: "(...) the principle of effective judicial protection (...) given that the procedure which allows the Court to give preliminary rulings is aimed at guaranteeing respect for the law in the interpretation and application of the Treaty, would be in conflict with this objective that interprets restrictively the rules which

The CJEU in the Elitaliana case gave relative recognition to the CFSP act in the instruments of secondary law, relating to the budget of the Union given that the appeal had a direct nature and the award act had to do with a contract concerning the Eulex mission in Kosovo:

> "(...) competence of the Union judges to hear the case in light of the provisions of the Treaties regarding CFSP (...) raised automatically the question of its own competence, considering it to be of public[27], to resolve it positively by virtue of the ratio decidendi in question (...) which raises some doubts in terms of economy of judgments (...)"[28].

provide for preliminary ruling jurisdiction (...) the possibility of referring a preliminary ruling to the Court must therefore be granted with regard to all provisions adopted by the Council which are intended to produce effects vis-à-vis third parties, regardless of their nature or by their shape (...)". C-354/04 P, Gestoras Pro Amnistía and others v. Council of 27 February 2007, ECLI:EU:C:2007:115, I-01579, par. 53.

[27]CJEU, C-439/13 P, Elitaliana v. Eulex Kosovo of 12 November 2015, op. cit., par. 37.

[28]CJEU, C-439/13 P, Elitaliana v. Eulex Kosovo of 12 November 2015, op. cit., parr. 66-67, which is affirmed that: "(...) the acts of the tender procedure were attributable to the Commission; that Eulex Kosovo did not have passive legitimacy; and that, precisely, the Commission should have been

The budget dealing with the expenses of the CFSP and the specialty of the related regime respects first and foremost the European integration. It did not imply the relative necessity of the powers that are relevant to the Luxembourg judgments given that the related EULEX mission for Kosovo and mission expenses have not been managed according to the rules and procedures that are applicable to the general budget of the Union, without limiting the exercise of jurisdiction by the judges of the CJEU.

The CJEU rules in a preliminary ruling and within the spirit of a regulatory framework. The CFSP has not excluded the competence and the related task of ius dicere, as a correct application, interpretative at a supranational level, which has applied the will of the treaties of the CFSP with autonomous way and the legal relief decisively specifies the exclusion of the competence of the CJEU even if it is a question of ensuring the provisions that are part of the

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the authentic passive legitimizer of the direct appeal proposed by the Elitaliana company (...)".

integration of a supranational path of European integration.

Finally, the preliminary ruling is considered as a guarantee of a margin of uniformity in the interpretation and application of the law of the Union where the policy of the CFSP falls into the jurisdiction of the national judges and the appeals obtained compensation even for damage without following forces restrictive measures against individuals.

The compensation for damages in the KS and KD case is an hypothesis of extra-contractual liability, where the Union, in relation to the jurisdiction of the Luxembourg judges and the jurisdiction of domestic judges, falls outside the system of sanctions. Within this orientation, the national judges and especially those who are in connection with the obligation to exercise the relevant jurisdiction as set out in Art. 19, par. 1, letter. 2 TEU and 274 TFEU also have as their objective yet another guarantee, namely that of avoiding judicial shopping to uniformly find a solution to their own jurisdiction problems and to reinvigorate the sector of the preliminary ruling mechanism, as it was evident in the

Photo-Frost case[29], where the CJEU highlighted the relative competence that allowed it to argue and intervene in matters that are not removed from the law of the Union but in the policy of the CFSP, which is part of the acquis with all the specific ways that characterize the very nature of the CJEU in the field of foreign policy.

[29]CJEU, C-314/85, Foto-Frost v. Hauptzollamt Lübeck-Ost 22 October 1987, ECLI:EU:C:1987:452, I-04199.

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